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FEDERAL COMMUNICATIONS COMMISSION  
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April 12, 1993

**BY HAND**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Reply Comments of the Office of the  
Commissioner of Baseball  
Inquiry Into Sports Programming Migration  
PP Docket No. 93-21

Dear Ms. Searcy:

Please find attached on behalf of the Office of the Commissioner of Baseball an original and 11 copies of the Reply Comments of the Office of the Commissioner of Baseball filed in the above-referenced proceeding.

Any questions regarding the submission should be referred to the undersigned.

Sincerely, \_\_\_\_\_

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APR 12 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 26 of  
the Cable Television Consumer  
Protection and Competition Act  
of 1992

Inquiry into Sports Programming  
Migration

PP Docket No. 93-21

**REPLY COMMENTS OF  
THE OFFICE OF THE  
COMMISSIONER OF BASEBALL**

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## SUMMARY

The commenting parties generally agree with Baseball that a sports migration problem does not exist and that anti-siphoning rules are unnecessary. As the data provided by Baseball and the other parties demonstrate, the past decade has seen a substantial growth in the availability of sports programming on both broadcast and cable television. INTV's contrary claims rely on selective pieces of information that inaccurately portray Baseball's telecasting patterns.

Exclusivity is a key ingredient in sports telecasting contracts. The exclusivity provisions in the Baseball/ESPN contract pose minimal restrictions on local broadcasters, and do not limit the number of Baseball games that broadcast stations may televise. The pro-consumer benefits of the Baseball/ESPN contract would not be possible without affording some measure of exclusivity. Similarly, the proliferation of superstations hinders the ability of Baseball to maintain the viewing options presented by the current contract with ESPN -- as well as to afford the exclusivity necessary to develop fully broadcaster interest in televising Baseball.

Finally, as was the case in 1977 when the Commission's former anti-siphoning rules were struck down, the record does not justify anti-siphoning rules.

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PP Docket No. 93-21

TO: The Commission

REPLY COMMENTS OF  
THE OFFICE OF THE  
COMMISSIONER OF BASEBALL

The Office of the Commissioner of Baseball ("Baseball") submits the following Reply Comments in response to the Commission's Notice of Inquiry, FCC 93-77 (released February 9, 1993) ("Notice").

A. Anti-Siphoning Rules Are Unnecessary And Unwarranted

(1) Most of the parties filing comments agree that siphoning rules are not needed. They generally recognize that, as with Baseball, the overall quantity and selection of sports programming has increased on both over-the-air and cable television since 1980; most share Baseball's view that the increase in sports programming

on cable television has supplemented, rather than replaced, the sports programming on over-the-air television.<sup>1</sup> Their experience, like Baseball's, has been that the interest of broadcasters in televising sporting events is limited by a number of external factors -- factors unrelated to the willingness of sports clubs to deal with those broadcasters.<sup>2</sup>

The minority view is advanced by the Association of Independent Television Stations ("INTV"), which claims that sports migration is seriously damaging the financial health of television stations across the country.

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1. \_\_\_\_\_

2. \_\_\_\_\_

According to INTV, the number of Baseball games "appearing on local television has declined since 1980." INTV Comments at 20. INTV says that "the most significant problem confronting local television stations today is the migration of regular season games." INTV Comments at 5.

INTV's rhetoric is squarely contrary to the facts. As the data provided in Baseball's initial comments demonstrate, the total number of Baseball games appearing on local television has significantly increased -- not declined -- since 1980. The total number of Baseball

1993. INTV Comments at 22-23. The Twins in fact presented 68 regular season broadcasts in 1987 (67 in 1988). The comparable number for 1993 is 61 -- and not 38 as INTV suggests. The 1993 figure represents an increase of 12 broadcasts over the 49 presented by the Twins in 1980. Furthermore, the Twins had no cable deal in 1980. Consequently, in 1993 Twins fans will not only have more Twins games available on broadcast television than in 1980; they also will have access to another 73 Twins games on the Midwest Sports Channel -- games that were not being televised in 1980.

As this demonstrates, the Twins have structured a telecasting arrangement which provides their fans with far greater viewing options than in 1980. That arrangement has not threatened the viability of the Twins' flagship station, WCCO. Indeed, WCCO and the Midwest Sports Channel are commonly owned by CBS. The relative balance between over-the-air broadcasts and cablecasts was thus the product of a decision made jointly by the Twins and their flagship station.<sup>4</sup>

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<sup>4</sup> Broadcasters own interests in several cable programming services that televise sports, e.g., PASS (Post-Newsweek); SportsChannel (NBC); TNT and Sports South (Turner); ESPN (ABC); Chicagoland (Tribune); NESN (WSBK-TV); and MSG (Paramount). The ability to place Baseball games on cable programming services thus affords broadcasters with an additional source of revenue -- and does not, as INTV argues, pose a threat to broadcasters.



(3) The data provided by INTV are misleading in several additional respects, for example --

- The Orioles broadcast 52 regular season games in 1980 (not the 57 claimed by INTV). The Orioles will broadcast 50 regular season games in 1993 in addition to televising 85 games on Home Team Sports.
- The Astros will broadcast 67 games in 1993 (not 63, as INTV says). The Astros broadcast the same number (67) in 1980. The number of Astros' broadcasts is down slightly from 1984 (71 games rather than the 75 games alleged by INTV). However, the number of cablecasts over HSE also has decreased from 79 in 1984 to 55 in 1993. Thus, the percentage of total telecasts that were presented by the Astros' flagship station (rather than on local cable) has increased from 47% in 1984 to 55% in 1993.
- The Detroit Tigers will broadcast 47 games in 1993, the same number as in 1980. The base year picked by INTV (1983) represents the high tide mark for Tigers' broadcasts during the period 1980-93. Even still the number of Tigers' broadcasts in 1983 (52 rather than the 57 alleged by INTV) is not materially different than the 1993 number (47). The number of cablecasts over PASS (commonly owned with the Tigers' flagship) also has declined from 80 (in 1984) to 70 (in 1993).
- The number of Indians' broadcasts has gone from 69 in 1980 to 60 in 1993. However, the number originally went down to 50 in 1983, six years before the Indians began televising over SportsChannel.

(4) INTV also notes that the Yankees and Red Sox will broadcast fewer games in 1993 than in 1980. The facts regarding the Yankees and Red Sox were discussed in Baseball's opening comments at pages 9-10, and will not be repeated here. It should be emphasized, however, that the fans in New York and Boston continue to receive a substantial amount of Major League Baseball on broadcast television -- in addition to that made available on cable.

Furthermore, the Yankees flagship (WPIX) and the Red Sox flagship (WSBK) were not denied the opportunity to negotiate for more Baseball games than what they ultimately agreed to take. Indeed, as noted above, the regional sports network which carries Red Sox games (NESN) is owned by WSBK (along with the Red Sox and Bruins); as with the Twins and WCCO, the Red Sox and WSBK made a joint decision concerning the appropriate balance of broadcasts and cablecasts of Red Sox games. Likewise, WPIX (licensed to Tribune Broadcasting) has not complained that the number of Yankee games it broadcasts is inadequate; nor has it claimed that too many games are carried by MSG (owned by Paramount, licensee of several independent broadcast stations). See Comments of Tribune Broadcasting Company at 5-6.<sup>5</sup>

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<sup>5</sup> INTV also references the change in White Sox  
[Footnote continued on next page]

(5) Finally, INTV points to four teams that, it acknowledges, increased their broadcasts of Baseball games. INTV Comments at 24. INTV, however, argues that the Commission should disregard the experience of these teams because they operated in markets with no regional sports networks. Id. By myopically confining its "analysis" to four teams, INTV has again conveyed a misleading impression:

**Table 1**  
**Telecasting Patterns of Baseball**  
**Clubs Ignored by INTV**  
**(1980-93)**

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<u>Clubs</u>	<u>1980</u> <u>Broadcasts</u>	<u>1993</u> <u>Broadcasts</u>	<u>1993</u> <u>Cablecasts</u>
Braves	96	125	28
Cubs	133	140	12
Giants	31	47	55
Padres	36	48	50
Phillies	69	85	68
Pirates	44	53	59
Reds	39	53	35
Angels	25	50	20
A's	27	50	59
Rangers	24	90	58

As Table 1 illustrates (and contrary to INTV's claim), many Baseball clubs have increased their over-the-air broadcasts while simultaneously placing games on regional sports networks.<sup>6</sup>

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[Footnote continued from previous page]  
telecasts. The facts of the White Sox situation are discussed in Baseball's initial comments at p. 8 n.2.

<sup>6</sup> As discussed above, the experience of the Twins, Astros, Orioles and Tigers also fails to support INTV's  
[Footnote continued on next page]

**B. Exclusivity Is An Essential Ingredient Of Sports Telecasting**

(1) INTV argues that the Wednesday night exclusivity provision of the ESPN contract has had a "tremendous negative impact" on local broadcasters. INTV Comments at 19. Baseball already has discussed the pro-consumer benefits reflected in its contract with ESPN. Baseball Comments at 20-21. Those benefits would not have been possible without affording ESPN some measure of exclusivity. Exclusivity provisions are a common and essential ingredient of any contract involving the telecasting of sports. See, e.g., Comments of ABC/Capital Cities, Inc. at 11.

Furthermore, as Baseball also explained, the exclusivity afforded ESPN has had minimal impact upon over-the-air telecasts of Baseball games. Flagship

restriction; it has not affected the number of over-the-air broadcasts of Baseball games.<sup>7</sup>

(2) In its initial comments Baseball explained that the compulsory license and the FCC's policies preclude clubs from granting broadcasters exclusive rights to televise particular games; this in turn reduces the interest of broadcasters in televising Baseball. See Baseball Comments at 13-15. According to data provided by Turner Broadcasting, the number of households that view Braves telecasts in any given market outside Atlanta is relatively small and does not cause any appreciable diversion. Thus, argues Turner, superstation telecasts do not reduce broadcaster interest in Baseball games.

Baseball has no way of assessing the accuracy or inaccuracy of Turner's data; Turner has not provided in its comments any of the supporting materials necessary for such an assessment. It should be noted, however, that the study done for the NBA on the negative impact of superstations leads to a dramatically different conclusion than Turner's data would suggest. See NBA Comments at Exhibit 7. Furthermore, if the level of

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<sup>7</sup> Contrary to INTV's claims, Wednesday night was not the "most popular night" for Baseball broadcasts. During 1989 -- the year immediately prior to the commencement of the ESPN telecasts -- broadcasters presented 28 percent more Baseball telecasts on Friday nights than on Wednesday nights. They also presented 11 percent more Baseball telecasts on Tuesday nights than on Wednesday nights.

Baseball viewing is as minimal as Turner argues, it is difficult to understand the basis for Turner's continued opposition to the exclusivity protection sought by Baseball for games licensed to local broadcasters.<sup>8</sup>

It also should be noted that superstations receive substantial benefits by being able to sell national advertising in connection with their broadcasts of Major League Baseball games. These national sales compete with the sales made by Baseball's national rightsholders, i.e., CBS and ESPN, who have paid marketplace compensation to Baseball for national telecasting rights. The unfair competition posed by superstation sales of national advertising has been a major factor depressing interest on the part of national broadcast and cable

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<sup>8</sup> Turner also argues that Baseball is fully compensated for the carriage of superstations, referring to over \$50 million that Baseball allegedly receives in CRT royalties and payments made by superstation clubs. Turner Comments at 11. The amount that Baseball receives from CRT royalties and superstation clubs is well below the amount that would be received in a free marketplace, absent compulsory licensing. Indeed, even if one accepted Turner's figures, Baseball receives less than 0.3 cents per subscriber per game for superstation Baseball telecasts -- less than one third of the rights fees that ESPN pays to Baseball for programming that does not achieve ratings as high as WWSN/ Braves

networks in televising regular season Baseball. See Broadcasting & Cable, March 15, 1993, at 53-54.<sup>9</sup>

C. The Record Here Is No Different Than That Which The Court In HBO Found Inadequate To Support Anti-Siphoning Rules

In 1977, the United States Court of Appeals for the D.C. Circuit struck down the Commission's former siphoning rules. Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977). INTV argues that the situation today is "totally different" than that which confronted the court in HBO. INTV Comments at 28. INTV is wrong.

As was the case in 1977, there simply is no reason to create migration rules. The siphoning that the Commission predicted in 1977 has failed to materialize. The number of Baseball games broadcast on local television has increased significantly in the succeeding years. Meanwhile, cable television has also grown, due in large part to the availability of excess sports programming that broadcast television could not or would

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<sup>9</sup> Turner also argues that superstations have provided "out-of-market viewers a lost cost alternative" to receiving Baseball telecasts. Turner Comments at 16. However, prior to WTBS' becoming a superstation, the games of the Atlanta Braves were televised by more than 30 broadcast stations serving millions of viewers throughout the Southeast United States; these stations were part of the Braves regional broadcast networks. Today, fans outside Atlanta must pay a monthly subscription fee to view the Braves telecasts on WTBS.

not televise. This mix means that today the American public is receiving more sports than ever before.

In addition, the availability of cable to consumers has increased dramatically since 1977. Whereas cable television passed 33% of homes in 1977 and had 12 million subscribers, it today passes over 95% of American households and has approximately 60 million subscribers. Because far more Americans have access to cable television, the need for siphoning rules is even less compelling now than when the original siphoning rules were struck down in 1977.

As the court in HBO noted, "'a regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.'" 567 F.2d at 36, quoting City of Chicago v. FPC, 458 F.2d at 742. There was no migration problem that existed in 1977 when the court in HBO invalidated the FCC's siphoning rules. There is no



migration problem today.

Respectfully submitted,

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April 12, 1993